Review: Federal Support for Local Law Enforcement Equipment Acquisition

Executive Office of the President

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Background

For decades, the federal government has provided billions of dollars in equipment to state and local law enforcement agencies (LEAs) through excess equipment transfers, asset forfeiture programs and federal grants. Particularly in the years since September 11, 2001, Congress and the Executive Branch have steadily increased spending and support for these programs, in light of legitimate concerns about the growing threat of terrorism, shrinking local budgets, and the relative ease with which some criminals are able to obtain high-powered weapons. These programs have significantly expanded over decades across multiple federal agencies without, at times, a commensurate growth in the infrastructure required to standardize procedures governing the flow of equipment from the federal government to LEAs. At the same time, training has not been institutionalized, specifically with respect to civil rights and civil liberties protections, or the safe use of equipment received through the federal government. Concerns over the lack of consistent protections have received renewed focus and attention in light of the recent unrest in Ferguson, Missouri.

The White House has engaged federal agencies, law enforcement stakeholders, civil rights stakeholders and academics in conducting a review of federal funding and programs that provide equipment to state and local LEAs. During the course of this review, White House components have explored whether existing federal programs: 1) provide LEAs with equipment that is appropriate to the needs of their communities, 2) ensure that LEAs are properly trained to employ the equipment they obtain, and 3) encourage LEAs to adopt organizational and operational practices and standards that prevent misuse/abuse of the equipment.

Summary of Findings

Between FY2009 and FY2014, the federal government provided nearly $18 billion dollars in funds and resources to support programs that provide equipment and tactical resources to state and local LEAs. LEAs can acquire equipment through various programs administered by the Departments of Justice (DOJ), Defense (DOD), Homeland Security (DHS), Treasury (Treasury), and the Office of National Drug Control Policy (ONDCP).[1] DOJ, DHS and ONDCP directly fund equipment purchases through multiple grant programs. DOD manages the transfer of excess equipment and also helps LEAs obtain new equipment at lower DOD prices. Additionally, DOJ and Treasury fund equipment purchases and other law enforcement activities through the equitable sharing component of the federal asset forfeiture programs. These programs, in the main, have been valuable and have provided state and local law enforcement with needed assistance as they carry out their critical missions in helping to keep the American people safe.

The bulk of the equipment transferred from federal sources to LEAs is fairly routine—office furniture, computers and other technological equipment, personal protective equipment and basic firearms. But federal agencies also transfer, or fund the purchase of, military equipment, including high powered weapons and tactical vehicles. Although such tactical equipment constitutes a small percentage of the total material that flows from the federal government to LEAs, it is nonetheless substantial. For example, under the DOD 1033 program, only 4% of the property provided to LEAs last year was "controlled property[2]" (property listed on the Department of State Munitions Control List or Department of Commerce Control List). However, this 4% translates into 78,000 pieces of controlled equipment transferred from DOD to LEAs. To date, approximately 460,000 pieces of controlled property are currently in the possession of LEAs across the country.

Despite the fact that federal equipment and purchasing programs generally share some of the same goals, each operates independently from the others and the policies and practices by which they are governed vary widely. When shared goals exist, it may be preferable to establish some common standards and practices. With respect to commonality, for instance, the lists of permissible equipment vary across programs, and each program employs different oversight and auditing procedures. They differ not only in the kind of reporting required by LEAs, but also in the frequency of reporting and level of detail required. These programs also vary in the type of training—if any—they require of LEAs. For example, the programs reviewed do not necessarily foster or require civil rights/civil liberties training and they generally lack mechanisms to hold LEAs accountable for the misuse or misapplication of equipment. This variation among federal agencies makes tracking the overall effects, use and misuse of federal or federally-funded equipment difficult.

Given the lack of consistency in how federal programs are structured, implemented and audited, and informed by conversations with stakeholders, four areas of further focus have

[1] A description of each program is attached to this memorandum.
[2] Examples of controlled property, as defined by DOD's 1033 Program, include small arms, night vision devices, tactical vehicles and aircraft.

emerged that could better ensure the appropriate use of federal programs to maximize the safety and security of police officers and the communities they serve: 1) Local Community Engagement, 2) Federal Coordination and Oversight, 3) Training Requirements, and 4) The Community Policing Model.

A. Local Community Engagement

Both law enforcement and civil rights stakeholders agreed that there is often insufficient transparency to decisions surrounding the acquisition of equipment. These programs often permit LEAs to request equipment outside of a local government's standard budget process and without civilian (non-police) government approval. Local elected officials are frequently not involved in the decision-making, and the general public is similarly unaware of what their LEAs possess. As noted by some of the law enforcement stakeholders who contributed to this review, this lack of transparency can adversely impact neighboring LEAs in the event of an emergency when they do not know what resources may be nearby. Additionally, this lack of transparency can result in the proliferation of equipment in amounts that are often inconsistent with the size and training capacity of smaller LEAs.

B. Federal Coordination and Oversight

Federal programs for equipping LEAs lack interagency coordination and uniform standards. At present, these programs generally do not share data or reporting requirements for tracking inventory and use of equipment. Many do not monitor the transfer of equipment obtained with federal funds between LEAs. As a result, there may be no single entity in the federal government able to track particular pieces of equipment at any one time. This lack of coordination hinders attempts to hold LEAs accountable. Although some federal agencies have terminated or suspended LEAs found to be misusing funds or equipment or violating the Constitution, the impact of these penalties is likely weakened by the fact that the offending LEAs are easily able to draw from multiple other federal government sources.

C. Training Requirements

Federal programs supporting the acquisition of equipment by LEAs do not include standard training requirements for operation and deployment of equipment. Members of law enforcement cited the specific concern that police chiefs and those responsible for authorizing the deployment of military-style equipment often lack proper training to understand when and how controlled equipment is most appropriately deployed. It is possible that an increase in technology sharing, cross-training and increased operational relationships between LEAs and the military can foster an environment at the local level in which it is difficult to distinguish between the appropriate *military* use and the appropriate *LEA* use of the same equipment. Moreover, stakeholders expressed concern that some training programs may unintentionally incentivize the use of military-like tactics and equipment when unnecessary, and therefore, would benefit from appropriate training requirements attached to both the operation and the deployment of federal or federally-funded equipment that encourage improved policing practices.

D. The Community Policing Model

Some stakeholders who contributed to this review expressed concerns about an increasing trend toward militarism and militarization in United States policing, which can affect law enforcement culture, organization and operations. Some stakeholders felt that the "show of force" typically associated with military operations, when employed by civilian police, can weaken community trust—especially in communities with a history of strained relationships between the community and local law enforcement. Public safety and civil rights/civil liberties training may prove especially useful to strengthen community policing approaches that position law enforcement officials as trusted guardians of public safety.

Recommendations

Federal equipment programs provide for the reuse of valuable equipment and have contributed to the protection of the public and to reduced operational risk to peace officers, who put their lives on the line every day to keep the American people safe. At the same time, when police lack adequate training, make poor operational choices, or improperly use equipment, these programs can facilitate excessive uses of force and serve as a highly visible barrier between police and the communities they secure. When officers misuse equipment, the partnership, problem-solving and crime prevention collaboration with citizens that is at the heart of effective policing can be eroded. With significantly improved coordination and oversight, these programs can provide more effective and efficient contributions to public safety.

In light of these initial findings, the President should consider issuing an Executive Order directing relevant agencies to address the issues related to equipment acquisition. Such an order could require a policy process to further develop appropriate actions and direct agencies to develop any directed programmatic reforms. Such an order could also direct all federal agencies to work together with law enforcement and civil rights/civil liberties organizations to develop specific recommendations within 120 days. Some broad examples of what process improvements agencies might implement as a result of further collaborative review include:

- *Develop a consistent list of controlled property allowable for acquisition by LEAs.*
- *Require local civilian (non-police) review of and authorization for LEAs to request or acquire controlled equipment.*
- *Mandate that LEAs which participate in federal equipment programs receive necessary training and have policies in place that address appropriate use and employment of controlled equipment, as well as protection of civil rights and civil liberties. Agencies should identify existing training opportunities and help LEAs avail themselves of those opportunities, including those offered by the Federal Law Enforcement Training Center (FLETC) and the International Association of Law Enforcement Standards and Training.*
- *Require after-action analysis reports for significant incidents involving federally provided or federally-funded equipment.*
- *Harmonize Federal programs so that they have consistent and transparent policies.*
- *Develop a database that includes information about controlled equipment purchased or acquired through Federal programs.*

Program Specifications

DEPARTMENT OF DEFENSE

The Department of Defense has two programs that provide equipment to LEAs; the 1033 Program and the 1122 Program.

1033 Program

The 1033 Program is authorized by Section 1033 of the National Defense Authorization Act of 1997. It permits the Secretary of Defense to transfer, without charge, excess DOD property (supplies and equipment) to federal, state and local law enforcement agencies. The Defense Logistics Agency (DLA) has transferred excess military equipment to approximately 8,000 federal and state law enforcement agencies and has provided $5.1B (ACQ value) in total property since 1990, including $2.7B within last 5 years.

ADMINISTRATION

To obtain property from the 1033 Program, LEAs submit automated requests through state coordinators designated by their Governor. The request includes a description of the intended use for each requested item. The State Coordinator screens the request and submits approved requests to DLA through DLA's Reutilization, Transfer and Donation web-site. Controlled property–such as weapons and armored vehicles—are provided to LEAs as a conditional loan—DLA retains title to the controlled property, and recipients must return controlled property to DOD at the end of its useful life. Because DOD does not have expertise in civilian law enforcement operations and cannot assess how equipment is used in the mission of an individual LEA, DOD relies upon State Coordinators, appointed by State Governors, to review and approve the particular types of equipment requested by LEAs, and upon the LEAs to determine the appropriate use for that equipment. Property obtained through the 1033 Program must be placed into use within one year of receipt, unless the condition of the property renders it unusable, in which case, controlled property must be returned to the DOD/DLA Disposition Services Site. DOD has the right to recall any and all property it has issued.

TYPES OF EQUIPMENT

Excess property transferred to LEAs is designated in two ways, as either controlled or non-controlled. During the 12-month period ending August 2014, approximately 96% of the property (1.8 million pieces) provided to LEAs was non-controlled property. This is property without military attributes, such as commercial vehicles, office furniture and supplies, generators, tents, tarps, tool kits, first aid kits, blankets, safety glasses, hand-tools, vehicle maintenance equipment, storage containers, lockers, shelving and forklifts. Approximately 4% (78,000 pieces) of the property provided was controlled property, i.e., military designed equipment on the Department of State Munitions Control List or Department of Commerce Control List, such as small arms, night vision devices, High Mobility Multipurpose Wheeled

Vehicles (HMMWVs or Humvees), Mine Resistant Ambush Protected Vehicles (MRAPs), aircraft and watercraft.

Controlled property is conditionally loaned to ensure recipients return the property to DOD at the end of its useful life. The 1033 Program prohibits the transfer of property whose predominant purpose is combat operations (e.g. tanks, fighter aircraft, Strykers, tracked vehicles, weapons greater than 7.62mm, grenade launchers, sniper rifles and crew-served weapons).

To date, approximately 460,000 pieces of controlled property are currently in the possession of LEAs. Examples of controlled property provided include: 92,442 small arms, 44,275 night vision devices, 5,235 high mobility, multi-purpose wheeled vehicles (HMMWVs), 617 mine resistant ambush protected vehicles and 616 aircraft.

OVERSIGHT

Annually, DLA requires a 100% physical inventory of controlled property that has been obtained through the 1033 Program. DLA does not review how equipment is being used. LEAs must document actual on-hand quantities, discrepancies, or other issues with their inventory. Agencies must also submit photos of all on-hand aircraft, watercraft, tactical vehicles and weapons.

State Coordinators must certify the inventories for his/her State to DLA by January 31st of each year and failure to submit the annual inventory certification and photos may result in an LEA and/or State suspension. The inventory contains the type and quantity of property issued to each LEA within the State.

Every two years, DLA conducts a Program Compliance Review (PCR) for each state or territory enrolled in the 1033 Program. The PCR is an in-person meeting with the State Coordinator, and selected LEAs. During the PCR, the DLA Law Enforcement Support Office (LESO) ensures compliance with all terms and conditions of the memorandum of agreement signed by DLA and the State Coordinator by reviewing the State Coordinator's Plan of Operations, the application of every LEA participating in the State program, and documentation for all inventory currently on hand and all property returned to DLA. Additionally, during the PCR, DLA physically reviews at least 20% of the entire State's 1033 Program weapons and randomly selects for review individual LEAs who are then subject to inventory of 100% of 1033 Program weapons, aircraft, watercraft and tactical vehicles and a minimum of 10% of all other controlled property. If discrepancies are found and the state and/or LEA fails to rectify the discrepancies by the assigned suspension date, the state and/or LEA may be subject to suspension or termination. Suspensions typically last a minimum of 30 days. Terminations typically last a minimum of one year. Currently, two states (NC, AL) and 134 additional LEAs are suspended from participation in the Program. During the past five years, eleven LEAs have had their participation terminated, including: 1) five requested by the State Coordinator (AZ), 2) four as the result of missing weapons (AZ, GA, WV and MN), and 3) two agencies disbanded

(AZ/OH). Neither civil rights/civil liberties nor any other training is required for LEAs to participate.[3]

The 1122 Program

Section 1122 of the National Defense Authorization Act permits state and local governments to purchase *new* law enforcement equipment for counter-drug activities through the federal government, effectively passing on the discounts enjoyed by the federal government because of its large-volume purchases. These discounts may be particularly attractive when dealing with high-tech equipment and newer technologies.

ADMINISTRATION

The 1122 Program operates with similar features to the 1033 program. The Governor of each state appoints a State Point of Contact (SPOC) who is responsible for vetting LEAs for participation in the program and reviewing all orders placed by customers within that state. The SPOC ensures that items ordered pursuant to the 1122 Program are suitable for counter-drug, homeland defense or emergency response functions.

TYPES OF EQUPIMENT

LEAs may purchase selected items included on the 1122 program catalog maintained by the General Services Administration (GSA). The catalog lists items available for purchase from DLA, the Department of the Army, or GSA. For example, the 1122 Program allows GSA to coordinate the purchase of vehicles for law enforcement agencies.

While DLA does not sell any Controlled Property through the 1122 program, the Army does allow LEAs to purchase Controlled Property, via existing DOD contracts. These items include weapons, ammunition and commercial grade night vision devices. For all property except weapons, title is transferred to the receiving LEA. Weapons, which are tracked by the Army, are required to be returned to DOD.

OVERSIGHT

1122 is not a grant or transfer program, so there is no compliance to monitor.

[3] During its participation in the White House review, DOD decided to implement new strategies to improve operation of the 1033 Program. They are working to increase coordination with DOJ by ensuring that there are no open investigations concerning an LEA before transferring equipment to that LEA. DOD has also invited DOJ to participate in its semi-annual review of the Restricted Property List (103 FSCs) to verify and validate those classes of equipment not particularly suited for law enforcement operations. DOD has further endeavored to improve information sharing with DHS by notifying DHS of LEA suspensions and terminations from the 1033 Program. Finally, DOD is implementing stronger standards for the states participating in the 1033 program by requiring that states attach a certified training plan, including use of force training, with any request for armored vehicles or assets which require specialized training. DOD began implementing these improvements during annual training with the state coordinators, during the week of November 3, 2014, in which DHS also participated as a step toward improving interagency coordination.

DEPARTMENT OF JUSTICE

Edward Byrne Memorial Justice Assistance Grant (JAG) Program

The Justice Assistance Grant (JAG) Program, administered by the Bureau of Justice Assistance (BJA), was established by the Consolidated Appropriations Act of 2005, when the discretionary Edward Byrne Memorial Grant Program merged with the formula-based Local Law Enforcement Block Grant (LLEBG) program. The JAG Program provides states, tribes and local governments with funding to support a range of program areas, including law enforcement operations. Per the statute, formula allocations are made to both state governments and units of local government. In FY2014, the JAG program was appropriated at $376M, with roughly $290M available for grants. Remaining JAG funds are used to fund specific programs, i.e. "carve-outs[4]" and administrative costs.

ADMINISTRATION

The Bureau of Justice Statistics (BJS) calculates, for each state and territory, a minimum base allocation which, based on the statutory JAG formula, can be enhanced by (1) the state's share of the national population and (2) the state's share of the country's Uniform Crime Reporting Program (UCR) Part 1 violent crime statistics. Once the state funding is calculated, 60 percent of the allocation is awarded to the state and 40 percent to eligible units of local government.

States also have a variable percentage of the allocation that is required to "pass-through" to units of local government. This amount, also calculated by BJS, is based on each state's crime expenditures. In addition, the formula calculates direct allocations for local governments within each state, based on their share of the total violent crime reported within the state. Local governments that are entitled to at least $10,000 awards may apply directly to BJA for local JAG funds.

In addition to other requirements, applicants for a JAG award must make the grant application available for review by the governing body of the state or unit of local government, or an organization designated by that governing body, not fewer than 30 days before the application is submitted to BJA. Governing body approval is not required, nor is any type of public hearing unless state/local law requires one.

EQUIPMENT

Current reporting shows that roughly 40% of law enforcement JAG funding is spent on equipment, within 18 specific categories. JAG funding can be used for computers, camera systems, radios, license plate readers, weapons, explosive devices and delivery systems. JAG funds may not be used directly or indirectly to pay for vehicles (excluding police cars), vessels, aircraft, unmanned aerial vehicles/unmanned aircraft, aircraft system or aerial vehicles unless a

[4] For example, in FY12, there was a $100M carve-out for the two Presidential Nominating Conventions.

waiver is requested and the Director of BJA certifies that extraordinary and exigent circumstances exist, making them essential to the maintenance of public safety and good order.[5] Firearms were purchased by 3.1% of grantees and less-lethal weapons (i.e. TASERs) were purchased by 4.6% of grantees. JAG grantees are allowed to purchase SWAT-related items, with current reporting showing fewer than 2% of all grantees reporting any SWAT purchases. To date, BJA has approved seven armored vehicles through the JAG program from 2005-2014.

OVERSIGHT

OJP/BJA provides some form of oversight for all open and active grants awarded by the agency, including JAG grants. BJA monitors, on an annual basis, a minimum of 10 percent of the total number of active grants awards, as well as 10 percent of the total dollar value of its active awards. For each active award, approximately 3,700 for FY2015, BJA also completes an annual desk-side compliance review of grant activities throughout the grant award period using BJA's Desk Review Tool. The Desk Review Tool enables program officers to conduct an extensive review of materials available in the grant file to determine administrative, financial and programmatic compliance and monitor recipient performance. Additionally, all open and active grants undergo an annual automated grant risk assessment to set monitoring priorities. OJP assesses each grant to determine the degree of risk an award presents using the OJP Grant Assessment Tool and employs a risk-based strategy for determining which grants require an on-site review or an enhanced programmatic desk review (EPDR), which employs the same process as the on-site review, but takes place remotely, either by video or teleconference. Both types of monitoring include extensive contact with the grantee; reviews of key financial, programmatic and administrative aspects of the grant program; and identification of issues for resolution. Ten percent of all open grants receive on-site monitoring or EPDR monitoring. While OJP does require financial grant training for selected grantees, civil rights/civil liberties training is limited to members of multi-jurisdictional task forces who are funded by the JAG program. This training addresses task force effectiveness as well as other key issues including privacy and civil liberties/rights, task force participation measurement, personnel selection, and task force oversight and accountability. Since FY2009, OJP/BJA has not suspended or terminated any JAG grant recipient even though the regulations permit such actions.

While BJA is responsible for monitoring the recipients of direct BJA awards, BJA grantees are required to monitor their sub-recipients. BJA grantees are required to have written sub-recipient monitoring policies and procedures to ensure that sub-recipient activities are conducted in accordance with federal program and grant requirements, laws and regulations. These policies and procedures are supposed to include a process for verifying the purchase and inventory of equipment.

The Community Oriented Policing Services (COPS) Office

[5] Police cruisers, police boats and police helicopters are allowable vehicles under JAG and do not require BJA certification.

COPS currently operates two programs that fund law enforcement equipment: the Tribal Resources Grant Program (TRGP) – which is part of the DOJ Consolidated Tribal Assistance Solicitation (CTAS) and the COPS Anti-Methamphetamine Program (CAMP).

Under the CTAS Program, which provided $27 million to federally recognized tribes and tribal consortia in FY2014, COPS has funded the purchase of weapons, including rifles and basic issue handguns. Patrol rifles are specifically prohibited by the CTAS Program, though DOJ has funded AR15 rifles when agencies indicate that these are standard issue weapons for their officers. During FY2014, the inaugural year for the CAMP Program, COPS provided $6 million for the investigation of illicit activities related to the manufacture and distribution of methamphetamine, including equipment. To date, CAMP grantees have primarily requested protective equipment, computer hardware and supplies. Within the last three years, all COPS programs have disallowed funding requests for tactical vehicles, non-standard issue weapons, explosive devices and delivery systems, and major end items such as armored vehicles, rotary wing aircraft and fixed wing aircraft.

COPS grant awards are subject to the same monitoring and compliance procedures as OJP grant awards, as described above.

Department of Justice Equitable Sharing Program (the "Assets Forfeiture Fund")

The Assets Forfeiture Fund ("AFF") was established in 1984 by the Comprehensive Crime Control Act, to receive the proceeds of forfeiture and to pay the costs associated with the seizure and forfeiture of assets. The Attorney General is authorized by statute to use the AFF to pay necessary expenses associated with forfeiture operations. Under this authority, the Attorney General may transfer property to any federal agency, or to any state or local LEA which participated directly in the seizure or forfeiture of the property. Since the inception of the Asset Forfeiture Program and the creation of the AFF, the Attorney General has promulgated guidelines on the seizure and forfeiture of assets. The Equitable Sharing Program ("ESP") was created within the Asset Forfeiture Program to oversee the transfer and use of forfeited funds by state or local LEAs. Over 7,500 LEAs participate in the ESP, and over $2.7 billion has been shared with those agencies since 2009.

ADMINISTRATION

To participate in the ESP, LEAs must annually file the Equitable Sharing Agreement and Certification (ESAC) form. After the seizure of property or cash in a joint investigation or adoption in an adoptive case (where the federal government "adopts" a state seizure), a participating state or local LEA may request a share of the property or cash by submitting a Form DAG-71, Application for Transfer of Federally Forfeited Property, to the lead federal seizing agency. Seizures must be valued at $5,000 or more, unless the person from whom it was seized is being criminally prosecuted, in which case, the seizure may be valued at $1,000 or more.[6]

[6] The Asset Forfeiture Policy Manual (2013), Chapter 1, Section I.D.1 lists the minimum net equity levels that generally must be met, before federal forfeiture actions are instituted. Real and commercial property, which may be sold, must provide a net equity of 20% of the appraised value for properties valued over $100,000 and at least

Depending on the value and type of forfeiture, the lead federal seizing agency, the United States Attorney, or the Deputy Attorney General serves as the equitable sharing deciding authority. Disbursements of forfeiture proceeds from the AFF to LEAs are made via the ESP at the discretion of the Attorney General and are not subject to appropriation. In 2013, DOJ released the first phase of the eShare Portal, which allows agencies to view and track sharing requests submitted to DOJ. Phase II of the eShare Portal permits electronic submission of the DAG-71 directly to the lead federal seizing agency. It is estimated that use of the eShare Portal will become mandatory in mid-2015.

LEAs participating in the ESP must comply with three basic requirements: 1) Funds must be maintained in a separate revenue account, 2) Participants must maintain a log of all tangible property purchased with equitable sharing funds or received from DOJ, and 3) Participants must maintain records of all expenditures made from equitably shared funds. In addition, LEAs must comply with the rules and permissible uses of shared funds outlined in DOJ's *Guide to Equitable Sharing for State and Local Law Enforcement Agencies (2009) ("2009 Guide").*

EQUIPMENT

LEAs are permitted to spend the funding for law enforcement purposes, including the purchase of equipment and vehicles subject to the appropriations and procurement rules and regulations of the state and local jurisdiction.

OVERSIGHT

Oversight and compliance of the ESP is accomplished in many different ways. A LEA must annually file the ESAC form to the Department within 60 days of the end of the agency's fiscal year. Each annual ESAC submission is reviewed for fiscal discrepancies and to ensure the funds are properly recorded and spent. If there is a discrepancy or a question, the agency is contacted to resolve the concern. Depending on the nature of the discrepancy, LEAs may be marked non-compliant until the discrepancy is resolved.

In addition to the ESAC reviews, a team of auditors conducts compliance reviews of LEAs based on a risk assessment model that was developed specifically for the ESP to identify state and local LEAs that are at risk of misusing or mishandling ESP funds. Since 2010, the Department has conducted 122 reviews. The Department's OIG also conducts independent audits of ESP participants. If a jurisdiction expends more than $500,000 in federal funds, it is required to submit an A-133 audit, or Single Audit, to the Office of Management and Budget. These audits are conducted by independent third parties hired by state or local jurisdictions. The DOJ Office of Justice Programs (OJP) is also responsible for reviewing findings related to

$20,000 for properties valued at less than $100,000. Vehicles must provide a net equity of $5,000. Aircraft and vessels must provide a net equity of $10,000 and all other personal property must provide a net equity of at least $1,000 or $5,000 in the aggregate. The 2015 edition of the Asset Forfeiture Policy Manual, to be published in January 2015, will include increased net equity thresholds for real and commercial property, vehicles, aircraft and vessels.

equitable sharing if included in a jurisdiction's annual A-133 audit. Since 2008, OJP has coordinated 49 reviews of A-133 findings related to equitable sharing.

If an LEA receives equitable sharing funds that result in a significant windfall to the agency, the LEA must submit a detailed spending plan for approval by the Department's Asset Forfeiture and Money Laundering Section (AFMLS). Once approved, all expenditures must be approved in advance by AFMLS, and the LEA's expenditures are carefully monitored and reviewed by the compliance review team.

There is extensive training nationwide on the ESP to federal, state, and local LEAs. Training is conducted at the local, regional, and national levels by AFMLS personnel and by personnel in the U.S. Attorneys' offices and federal law enforcement agencies. Specialized equitable sharing training has been developed and implemented for city, county, and state finance and government staff. The training does not include instruction on civil rights/civil liberties.

Failure to comply with DOJ's 2009 Guide may result in denied sharing requests, temporary or permanent exclusion from further participation in the ESP, repayment of impermissibly used funds, and offsets from future sharing in amounts equal to impermissible uses. During the last five years, five LEAs have been made ineligible or non-compliant from participation in the ESP for significant program violations. Three of the LEAs were made ineligible or non-compliant after DOJ's Civil Rights Division issued a written determination that the LEA had committed civil rights violations.

DEPARTMENT OF HOMELAND SECURITY (DHS)

Since 2003, DHS has made funding available for LEAs chiefly through FEMA's Homeland Security Grant Program (HSGP), pursuant to the authorities currently provided at 6 U.S.C. §§ 603-609. The HSGP is comprised of three, interconnected grant programs; the State Homeland Security Program (SHSP), the Urban Areas Security Initiative (UASI) and Operation Stonegarden (OPSG). SHSP and UASI are designed to build capabilities to prevent, protect against, mitigate, respond to, and recover from terrorist attacks, disasters, and other incidents in support of the National Preparedness Goal. States are required by law to pass-through (i.e., sub-award) at least 80 percent of funding to local or tribal jurisdictions. The UASI program provides funding for high-threat, high-density urban areas. States are required to pass-through at least 80 percent of UASI funds directly to those local jurisdictions situated in urban areas. These funds are then administered by an Urban Area Working Group. States and urban areas allocate grant funds at their own discretion as long as those allocations conform to applicable governing laws, regulations and guidelines. Operation Stonegarden provides funding to enhance cooperation and coordination among local, tribal, territorial, state and federal law enforcement agencies to secure the United States' borders. OPSG funds are allocated based on a sector-specific DHS border risk methodology. In FY2014, HSGP provided over $1 billion in grant funding to all U.S. States and Territories and to 39 Urban Areas across the country.

ADMINISTRATION

Within each state or territory participating in the HSGP, State Administrative Agencies (SAAs) are designated by the Governor to act as the recipient agency responsible for administering SHSP, UASI and OPSG grant funds. Prior to FY2014, HSGP applicants were required to provide broad narratives laying out how proposed expenditures addressed unmet capability gaps. Beginning in FY2014, project-based requirements were incorporated into the HSGP. Applicants are now required to provide project-level information in the application that is more extensive than in the past. When submitting their applications for SHSP and UASI funds, LEAs must develop a formal Investment Justification (IJ) that addresses each investment being proposed for funding. The IJ demonstrates how proposed projects support sustainment of existing core capabilities or address capability gaps and deficiencies in one or more core capabilities outlined in the National Preparedness Goal and as identified in their most recent State Preparedness Report. The IJ also demonstrates alignment to the urban area, state, and/or regional Threat and Hazard Identification and Risk Assessments (THIRAs), national priorities, and applicable guidance provided by FEMA. The IJ also describes engagement with and/or impacts on the general and vulnerable populations, to include children, the elderly, pregnant women, and individuals with disabilities. Furthermore, the IJ must clearly identify and explain the investment's nexus to terrorism preparedness.

TYPES OF EQUIPMENT

HSGP funds can be used for equipment (including tactical vehicles, helicopters and personal protective gear), planning and organizational costs, training and exercises. HSGP is the primary DHS funding stream through which LEAs purchase items such as BearCat tactical vehicles, helicopters and personal protective equipment. Per FEMA policy, the purchase of weapons and weapons accessories is prohibited within the HSGP. HSGP funds may be used to facilitate the transport, receipt and storage of equipment from DOD's 1033 programs, provided that equipment is otherwise eligible under the HSGP.

OVERSIGHT

DHS monitors grantee compliance with program standards through either a desk-based review or on-site visits, or both. DHS reviews and analyzes the financial, programmatic, performance, compliance and administrative processes, policies, activities, and other attributes of each federal assistance award and identifies areas where technical assistance, corrective actions and other support may be needed. Under the Homeland Security Act of 2002, as amended, DHS is required to conduct programmatic and financial monitoring of HSGP grantees every two years. However, DHS conducts a first-line programmatic review on all HSGP grantees annually and, based on a risk based monitoring assessment, selects additional grantees for desk reviews or site visits.

DHS mandates that grantees must maintain property records for equipment purchased with DHS grant funds. The records must include a description of the property; a serial number or other identification number; the source of property; who holds title, the acquisition date and cost of the property; percentage of federal participation in the cost of the property; the location, use and condition of the property; and any ultimate disposition data, including the date of

disposal and sale price of the property. LEAs must develop an inventory control system to ensure adequate safeguards to prevent loss, damage or theft of the property.

As a term and condition of all grant awards, DHS requires that grant recipients and sub-recipients comply with the requirements of Title VI of the *Civil Rights Act of 1964* (42 U.S.C. §2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. DHS also requires that all grant recipients comply with Title VIII of the *Civil Rights Act of 1968* (42 U.S.C. § 3601 et seq.).

SAAs are responsible for providing oversight of sub-grantees and ensuring sub-grantee compliance with DHS equipment tracking and reporting requirements through applicable financial and programmatic monitoring activities, and DHS maintains the ability to review and audit compliance. As sub-grantees, LEAs have wide discretion in how they use this funding (though they can only purchase items that are allowable per HSGP's authorizing statute and Funding Opportunity Announcement), and report only broad categories of expenditures.

During FY2014, DHS monitored 24 awards via programmatic site visit and 11 awards via programmatic desk audit. In addition, grants staff in the FEMA Regions conduct at minimum a cash analysis for all grantees and, based on a monitoring assessment, select additional grantees for desk reviews or site visits. In FY2014, 186 awards were monitored via desk review, and 543 awards were monitored via site visit. The DHS Office of the Inspector General provides another layer of grant oversight. Pursuant to Public Law 110−53, Implementing Recommendations of the 9/11 Commission Act, the DHS OIG has audited all 56 Homeland Security Grant Program grantees.

To date, no HSGP grantee has ever been suspended or debarred from future participation in Federal financial assistance programs as a result of their actions under their HSGP award.

DEPARTMENT OF THE TREASURY

The Treasury Forfeiture Fund's Equitable Sharing Program (TFF) was authorized in 1993 and is governed by 31 U.S.C. § 9703. The TFF is available to the Secretary of Treasury without fiscal year limitation and is the depository account for seizures and forfeitures pursuant to any law enforced or administered by the Department of the Treasury or Department of Homeland Security law enforcement agencies. Additionally, the Secretary's Enforcement Fund (SEF) is derived from equitable sharing received from DOJ's AFF for work done by Treasury and DHS law enforcement bureaus leading to Justice Department forfeitures. SEF revenue is available for federal law enforcement related purposes of any Treasury or DHS law enforcement organization. In FY2013, the TFF received more than $1.7 billion in total net deposits and disbursed equitable sharing payments of nearly $123 million to state and local LEAs participating in investigations resulting in forfeiture performed by a Treasury Forfeiture Fund member agency (IRS Criminal

Investigation, Immigration and Customs Enforcement, U.S. Secret Service, Customs and Border Protection).[7]

ADMINSTRATION

The Department of the Treasury Office for Asset Forfeiture (TEOAF) Policy Directive No. 20 establishes minimum net equity requirements for different types of federal agencies' seizures (such as currency/financial accounts, real property, vehicles, aircraft, vessels and other general properties), as well as exceptions from these requirements if they would compromise a law enforcement operation. Seizures must meet the same minimum values as with DOJ's Equitable Sharing Program. After a seizure in a joint investigation or an adoption, the participating LEA may request a share of the forfeited assets by submitting a request to the Treasury Forfeiture Fund member agency completing the forfeiture. The request must be submitted within 60 days after the seizure or within 60 days after the federal adoption of a state or local seizure.

EQUIPMENT

TFF funds may be used for any law enforcement purpose consistent with Treasury's Guide to Equitable Sharing for Foreign Countries and Federal, State and Local Law Enforcement Agencies and with the applicable laws, rules, regulations, and orders of the state or local jurisdiction governing the use of public funds for law enforcement purposes, including the purchase or lease of body armor, firearms and vehicles. These disbursements are discretionary and not subject to appropriation. Currently, a state or local LEA may transfer a portion of its shared cash or shared property to another state or LEA, to be used for law enforcement purposes, so long as the receiving agency has a current and valid federal sharing agreement and certification on file.

OVERSIGHT

To ensure compliance with standards for use of, and accounting for, shared funds and property by state and local LEAs, TEOAF conducts "compliance reviews" as needed. The compliance reviews are conducted periodically throughout the year and target the largest (>$1 million) and most frequent recipients of the selected fiscal year's equitable sharing funds. In FY2015, 41 (out of close to 1000) agencies have been selected to be reviewed. In a "windfall" situation (equitable sharing over 25% of the recipient agency's annual budget) the recipient agency is required to submit to TEOAF a detailed spending proposal, and involves follow-up reviews and an audit. TEOAF coordinates with DOJ on compliance review findings pertaining to violations of equitable sharing guidelines.

LEAs must submit the Equitable Sharing Agreement and Certification Form (ESAC) annually based on the LEA's fiscal year. The ESAC collects equitable sharing activity, including a summary of Federal Annual Sharing Funds Received in addition to a summary of shared funds spent. To determine whether a compliance review, or OIG referral, or other action

[7] Equitable sharing funds can also be provided to the foreign governments contributing to forfeiture cases and to the Justice Asset Forfeiture Fund, as a share of its member agencies' contribution to TFF forfeiture.

is necessary, TEOAF often receives information from DOJ or other sources. TEOAF currently employs contractors to perform state and local reviews, including onsite reviews, as well as paperwork oversight reviews. Final determination of an agency's eligibility is within the discretion of TEOAF and/or DOJ's Asset Forfeiture and Money Laundering Section. Since FY2009, thirteen agencies have been suspended from participation in TEOAF's Equitable Sharing Program for various program violations, including impermissible use of funds, ongoing civil rights investigations and other federal charges.

OFFICE OF NATIONAL DRUG CONTROL POLICY (ONDCP)

High Intensity Drug Trafficking Areas (HIDTA) Program

Created by Congress in 1988, the High Intensity Drug Trafficking Areas (HIDTA) Program coordinates federal, state, local and tribal LEAs operating in areas determined to be critical drug trafficking regions of the United States. There are currently 28 HIDTAs affiliated with 200 grantees located in 47 states. HIDTA funds are not used to acquire military style equipment. However, federal, state, and local law enforcement organizations participating in a regional HIDTA may deploy such equipment.

ADMINSTRATION

ONDCP operates the HIDTA program, pursuant to the "Office of National Drug Control Policy Reauthorization Act of 2006." Through non-competitive grants, HIDTA provides resources to assist federal, state, local and tribal agencies in coordinating activities that address multi-jurisdictional drug trafficking and supports task forces to conduct drug enforcement related operations.

Each designated HIDTA region has an Executive Board composed of federal, state, local and tribal law enforcement leaders that submit an annual Threat Assessment, Strategy, and budget request to fund activities that fall within any of four categories: 1) Enforcement, 2) Intelligence and Information Sharing, 3) Support, and 4) Management and Coordination. Specific activities include enforcement such as multi-agency investigations, interdiction, and prosecution activities targeting drug trafficking and money laundering organizations, drug production organizations, drug gangs, drug fugitives, and other serious crimes with a drug nexus. The annual budget submissions are reviewed by ONDCP to ensure compliance with grant law and HIDTA program policy.

TYPES OF EQUIPMENT

HIDTA Program Policy and Budget Guidance specifically prohibits the purchase of weapons, ammunition and standard issue departmental-type raid/tactical gear with HIDTA grant funds. HIDTA funds may be spent on such items as computers and cell phones; services, including telephone company wires for telephone taps; overtime for law enforcement officers; and office space and supplies. Funds may also be used to acquire vehicles including special purpose vehicles, such as surveillance vans, for a participating agency.

OVERSIGHT

Each HIDTA grantee or resource recipient that acquires or holds HIDTA-purchased equipment must maintain a tracking system to account for all HIDTA-purchased equipment, vehicles and other items valued at $5,000 or more at the time of purchase. Oversight and compliance of HIDTA grants is accomplished by audits, reviews conducted by HIDTA Executive Board and ONDCP On-Site Program Reviews. A-133 audits are conducted annually by grantees and are necessary for compliance with OMB Circular A-133 concerning federal assistance and grants in amounts of $500,000 or more. ONDCP audits smaller grants as needed and each year, contracts with an independent accounting firm to conduct financial audits of 7 of the 200 HIDTA grantees. HIDTA Executive Boards are required to review initiatives annually and ONDCP leads On-Site Reviews to ensure compliance with program policy annually. Approximately eight regional HIDTAs are reviewed each year. As an additional oversight, each request for reimbursement submitted by a grantee receives an ONDCP funded desk audit to ensure compliance with guidance. To date, no LEA has ever been suspended from the HIDTA program or had their participation in the program terminated.